



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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CITY ATTORNEY'S INTERIM REPORT ON WASTEWATER REVEALS OFFICIALS MISLED THE PUBLIC ABOUT SEWER RATE OVERCHARGES

San Diego, CA: City Attorney Michael Aguirre's most recent investigation documents that during a seven-year period City officials maintained a sewer rate structure that overcharged City of San Diego residents. The City Council's action resulted in more than \$120 million in overcharges to San Diego households from 1998 to 2004 and lower rates for large commercial users of the system. This information is contained in the City Attorney's Interim Report No. 1 on Wastewater.

The report also documents that San Diego City officials failed to disclose material facts in connection with the offer and sale of sewer revenue bonds, including the fact that the City's wastewater rate structure was not in compliance with federal or state laws. The report concludes that members of the City Council and other City officials acted knowingly or recklessly to approve related disclosures to investors that disseminated materially false or misleading information.

"The public has a right to know that certain members of their government were complicit in overcharging residents for services that were not in compliance with federal and state law," said City Attorney Aguirre. "This report will both further the federal investigations now underway and help the City focus on reimbursing residential ratepayers for overcharges."

Councilmember Donna Frye first brought problems with the City wastewater system to Mr. Aguirre's attention last year, when he was still a candidate for office. According to City Attorney Aguirre, Ms. Frye had been unable to persuade her colleagues on the Council to schedule a public meeting to discuss the City's regressive sewer rate structure and its failure to live up to the mandates of federal and state law. At a May 14, 2002 televised City Council meeting, Ms. Frye had raised the issue by inquiring when a previously commissioned study of the costs of wastewater service would be publicly released. Mayor Dick Murphy responded by stating that the Council had discussed the study "informally."

The following significant findings are contained in the report:

- **City of San Diego Accepts Federal and State Grants with Conditions**
Capital improvements to the City's wastewater system, which were approved in 1991, were paid for in part by federal and state grants and loans in excess \$300 million. As a condition of receiving these funds, the City of San Diego agreed to adopt a user-based system for charging wastewater rates that would encourage conservation.

(more)

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- **City Council Commissions Sewer Cost of Service Study**
The City Council commissioned a sewer cost of service study, a draft of which was completed on January 15, 2002. The report concluded that the City, in violation of its agreement, had not instituted a user-rate based system.
- **City Council Votes to Hide the Study from the Public**
On January 29, 2002, the Council voted 6-2 in closed session not to release the sewer rate study. Councilmembers Donna Frye and George Stevens were in the minority; Councilmember Scott Peters was absent.
- **Commercial Rate User Lobbies City Council**
In a letter dated August 4, 2003, International Specialty Products, Inc, a San Diego commercial user of the system, sought to delay the implementation of a rate structure that would have complied with federal and state grants.
- **City Cited for Non-Compliance**
In a letter dated November 26, 2003, Ronald Blair, a sanitary engineer associate for the State Water Control Board, wrote then-San Diego City Manager Michael Uberuaga that he had been “unable to find any documentation indicating that the City implemented their wastewater revenue program approved by the State Water Resources Control Board on September 17, 1991.” Mr. Blair’s letter brought to an end the seven-year effort by City officials to delay the implementation of a user-based system.
- **City Attorney’s Office Issues Legal Opinion**
In October 2002, then-City Attorney Casey Gwinn issued an opinion on the City’s obligation to comply with the Water Control Board’s billing requirements. This opinion determined that the City would suffer significant exposure to litigation if it failed to comply with federal and state loan and grant guidelines.
- **City Issues Bond Offerings and Makes Misrepresentations**
In 1995, 1997, and 1999, the City misrepresented and omitted material facts from bond offering documents regarding its non-compliance with federal and state laws relating to the City’s wastewater system.
- **Lawsuit Filed Against City for Overcharging Residential Sewer Rate Users**
In 2004, a lawsuit was filed against the City of San Diego that seeks to recover the sewer rate overcharges that had been paid by households.
- **Federal Investigations of the City of San Diego Are Launched**
The United States Securities and Exchange Commission and the United States Grand Jury for the Southern District of California are investigating decisions by San Diego officials related to the residential rate overcharges.

The City Wastewater Department, which treats the wastewater from the City of San Diego and from 15 other cities and districts, services a population in excess of 2.2 million living in a 450-square-mile area of the county.

The Wastewater Interim Report No. 1 regarding the City of San Diego Officials’ Failure to Disclose Material Facts in connection with the Offer and Sale of Wastewater Bonds and Related Improper Activity can be found on the City Attorney’s website: www.sandiegocityattorney.org.

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